

Responses to Additional Questions for the Record

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Questions Posed By The Honorable Henry A. Waxman

3(a). Vertical mergers – in which a company acquires a key supplier or service provider – can create cost savings due to improved coordination, but can also make it hard for other companies to compete in the same market. Are the current FTC guidelines concerning vertical mergers sufficient to address this concern?

Answer: No. The FTC currently does not have vertical merger guidelines. I believe that it would be beneficial if the FTC developed and issued vertical merger guidelines

3(b). Are antitrust statutes important solely for reasons of economic efficiency, or do you believe they have a broader political or social significance? Please explain.

Answer: The antitrust statutes also have as their goal protecting consumers from paying higher prices due to unfairly acquired market power. When cartels raise prices, for example, these higher prices constitute a form of theft from consumers that Congress meant to prevent when it enacted the antitrust laws. For the relevant legislative history and case law see John B. Kirkwood & Robert H. Lande, “The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency,” 84 Notre Dame L. Rev. 191 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1113927 and Robert H. Lande, “Wealth Transfers As the Original And Primary Concern of Antitrust: The Efficiency Interpretation Challenged,” 34 Hastings L. J. 65 (1982), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2065413

3(C). Do you see the non-economic benefits of antitrust laws (e.g., decentralization of power, freedom of choice, and increased trust in the free market system) as essential to how these laws and the enforcement of these laws are ultimately analyzed and judged?

Answer: The antitrust laws also have as their goal enabling consumers to receive the array of choices that the unrestrained operation of the free market would have provided to them. Practices such as cartels that unreasonably restrict the choices the free market otherwise would have delivered to consumers are antitrust violations. See Neil W. Averitt & Robert H. Lande, “Using The Consumer

Questions Posed By The Honorable Jan Schakowsky

- 2(a). Is the FTC exceeding its authority to enforce antitrust laws? Do you believe there is convincing evidence to support the position that the Commission is acting in an unrestrained manner?

Answer. No, the FTC is not exceeding its authority to enforce the antitrust laws, and the agency is not acting in an unrestrained manner. I do disagree as to the optimal with the wording of certain FTC decisions from time to time, but this is only natural, and does not mean they are acting in any way improperly.

- (b). To your knowledge, has there been a significant “chilling effect” on business as a result of the FTC’s recent enforcement of the antitrust laws?

Answer: No. I have never seen neutral evidence of a significant “chilling effect” on business as a result of recent FTC enforcement of the antitrust laws.

- (c). In your testimony, you suggested a number of areas in which the FTC possesses the authority to act against anticompetitive conduct but has not done so. Given the extent of consolidation in certain industries in recent decades, do you think there are circumstances or types of cases in which the FTC has been reluctant to act?

Answer: Yes. I believe the FTC sometimes has been reluctant to act in the public interest because some FTC Commissioners have given too much weight to low probabilities that enforcement actions could possibly harm big businesses, but that these same Commissioners have not given enough weight to the possibility that agency inaction is highly likely to harm consumers.

- (d). Do you believe the FTC has an adequate understanding of how its competition policy decisions ultimately turn out, over the long term? Do you believe the FTC (or outside entities that could advise the FTC) adequately test or evaluate previous competition policy, and do you think long-term lessons play a large enough role in influencing future policy decisions?

Answer: I believe the FTC should engage in more impact evaluation studies of their enforcement efforts, and also of their decisions not to enforce the antitrust laws. I also believe that outside entities should undertake more of the same types of studies. I believe these studies would be likely to help improve long term FTC enforcement and policy decisions.

Please let me know if I can supply you with additional information about any of these issues. I would be delighted to do this either in writing or orally, at your convenience.

Sincerely yours,

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